
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-05-TP-144
)	
Brasfield & Gorrie, LLC)	NAL/Acct. No. 200632700002
Birmingham, AL)	
)	FRN 0008802050

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 27, 2006

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Brasfield & Gorrie, LLC (“Brasfield & Gorrie”), licensee of stations WPQG374 and WPLY756, apparently willfully and repeatedly violated Sections 1.903(a) and 90.425(a) of the Commission's Rules (“Rules”)¹ by failing to operate their station in accordance with their station authorizations and failing to identify their station transmissions. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Brasfield & Gorrie is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. In response to a complaint of interference to the portable radio units of Halifax Medical Center, a licensee in the Public Safety Pool, the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) opened an investigation. The complainant stated that the interfering traffic often discussed the operation of construction cranes and contained profanity. On the morning of August 13, 2005, an agent from the Tampa Office observed the interference on 465.550 MHz to the complainant’s radio equipment in Daytona, Florida. The agent monitored a group of radio operators on 465.550 MHz from his mobile direction finding vehicle for over an hour and a half. The radio operators discussed operation of construction cranes. The radio operators did not transmit station identification. Using radio direction finding techniques, the agent determined that the source of the transmissions on 465.550 MHz was emanating from a construction site in downtown Orlando, Florida.

3. On the morning of August 15, 2005, the agent returned to the Orlando construction site and monitored 465.550 MHz for over thirty minutes. The agent verified with direction finding equipment that the signal on 465.550 MHz was emanating from the site. The radio operators gave commands over the air that correlated with the movements of the construction cranes. None of the radio operators identified their station transmissions. The agent contacted the complainant and positively confirmed over the phone that the interference exactly matched the radio transmissions observed at the construction site in Orlando. The agent then interviewed the managers of Brasfield & Gorrie located at the construction site. The agent played a tape recording of the interference, and the managers recognized the voices of the

¹ 47 C.F.R. §§ 1.903(a), 90.425(a).

² 47 U.S.C. § 503(b).

individuals as members of their construction crew. The agent requested a copy of Brasfield & Gorrie's license to operate its radio system, but they were unable to provide one at that time. The managers stated that they would utilize a different radio channel.

4. On August 16, 2005, the company that sold and programmed the radios informed the agent that Brasfield & Gorrie held two nation-wide licenses, WPLY756 and WPQG374. That company informed the agent that it had programmed Brasfield & Gorrie's radios on 465.550 MHz. Brasfield & Gorrie's licenses do not authorize operations on 465.550 MHz.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

6. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission. Brasfield & Gorrie is licensed in the Industrial Radio Pool and is not eligible to operate on public safety frequencies. On August 13 and 15, 2005, an agent from the Tampa Office determined that Brasfield & Gorrie operated a land mobile station on 465.550 MHz, a frequency not authorized by their licenses, WPQG374 and WPLY756. In addition, the frequency 465.550 MHz is authorized only to licensees in the Public Safety pool.⁵ Brasfield & Gorrie's radio supplier also admitted that the radios were originally programmed to 465.550 MHz.

7. Section 90.425(a) of the Rules requires each station to identify in English or International Morse Code its assigned call sign during each transmission or exchange of transmissions, or once each 15 minutes. On August 13 and 15, 2005, an agent from the Tampa Office monitored Brasfield & Gorrie's radio transmissions for more than 15 minutes. The agent never heard any of Brasfield & Gorrie's radio users identify the call sign in use.

8. Based on the evidence before us, we find that Brasfield & Gorrie apparently willfully and repeatedly violated Sections 1.903(a) and 90.425(a) of the Rules by failing to operate their station in accordance with their station authorizations (operating on an unauthorized frequency)⁶ and failing to identify their station.

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80*

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ See 47 C.F.R. § 90.20(c).

⁶ See *Acapulco Car Service, Inc.*, Forfeiture Order, 19 FCC Rcd 272 (Enf. Bur. 2004).

of the Rules to Incorporate the Forfeiture Guidelines, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for using an unauthorized frequency is \$4,000 and failing to provide station identification is \$1,000.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Brasfield & Gorrie is apparently liable for a five thousand dollar (\$5,000) forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules,⁹ Brasfield & Gorrie, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand dollars (\$5,000) for violations of Sections 1.903(a) and 90.425(a) of the Rules.¹⁰

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Brasfield & Gorrie, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 2203 N. Lois Avenue, Suite 1215, Tampa, FL 33607 and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹¹

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

¹⁰ 47 C.F.R. §§ 1.903(a), 90.425(a).

¹¹ 47 C.F.R. § 1.1914.

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16. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Brasfield & Gorrie, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office, South Central Region
Enforcement Bureau